

APR 11 2006

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 06-50001

VERSUS

JUDGE S. MAURICE HICKS, JR.

DANIEL SMART

MAGISTRATE JUDGE HORNSBY

ORDER

Before the Court is a "Motion To Dismiss Bill Of Information" filed by defendant Daniel Smart ("Smart"). See Record Document 3. The Government opposes the motion. See Record Document 5.

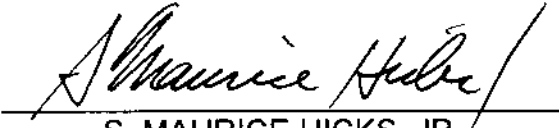
In United States v. Coil, — F.3d —, No. 04-51110, 2006 WL 618834, *4 (5th Cir. March 14, 2006), the Fifth Circuit upheld the constitutionality of 18 U.S.C. § 1465, the statute under which the defendant was convicted for transportation of obscene materials for sale or distribution, against attacks based on both the First Amendment and substantive due process. In the instant case, Smart is charged with violation of 18 U.S.C. § 1466, a companion statute to 18 U.S.C. § 1465.¹ Thus, the rationale of Coil, which is binding precedent on this Court, controls in the instant case as Smart lodges both First Amendment and substantive due process attacks against 18 U.S.C. § 1466.

Accordingly,

IT IS ORDERED that the "Motion To Dismiss Bill Of Information" filed by defendant Daniel Smart (Record Document 3) be and is hereby **DENIED**.

¹Smart acknowledges that the issue of the constitutionality of 18 U.S.C. § 1466 raised in his motion has been foreclosed in this Circuit by the recent Coil decision. See Record Document 3, ¶ 3. Thus, Smart is urging the First Amendment and substantive due process arguments in his motion to dismiss in order to preserve the issues for further review. See id.

THUS DONE AND SIGNED, at Shreveport, Louisiana, this the 11th day of April,
2006.


S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE